



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0711]

RIN 1625-AA09

Drawbridge Operation Regulation; Raccoon Creek, Bridgeport, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the U. S. Route 130 lift Bridge over Raccoon Creek at mile marker 1.8 in Bridgeport, NJ. Bridge tender logs from 2007-2013 indicates that the majority of the marine traffic transits Raccoon Creek during the summer months. To better align the operating schedule to meet the needs of both land and marine traffic, the proposed change would reduce the number of months the bridge is required to open on signal during the early spring and fall of each year.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2013-0711 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mrs. Jessica Shea, Fifth Coast Guard District Bridge Administration Division, Coast Guard; telephone 757-398-6422, e-mail [jessica.c.shea2@uscg.mil](mailto:jessica.c.shea2@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security

FR	<u>Federal Register</u>
NJDOT	New Jersey Department of Transportation
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Public Participation and Request for Comments

We encourage you to participate in this proposed rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this proposed rulemaking (USCG-2013-0711), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket

Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2013-0711 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-2013-0711 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

### B. Regulatory History and Information

The current operating schedule for the bridge is set out in 33 CFR 117.741 (a), effective May 20, 2003. The current regulation states: (a) The draw of the Route 130 highway bridge, mile 1.8, at Bridgeport, shall open on signal:  
(1) March 1 through November 30, from 7 a.m. to 11 p.m.

(2) At all other times, if at least four hours notice is given.

#### C. Basis and Purpose

The bridge owner, New Jersey Department of Transportation (NJDOT), requested a change in the operation regulation for the U. S. Route 130 highway bridge, at mile 1.8, across Raccoon Creek in Bridgeport, NJ. NJDOT provided the Coast Guard with the bridge tender logs dating back to 2007 to illustrate the marine traffic patterns on Raccoon Creek. Based on the information provided by the bridge tenders, there have been very few requests requiring openings between March 1 and November 30 during the 7 a.m. to 11 p.m. time period.

The vertical clearance of the vertical-lift bridge is 5 feet above mean high water in the closed position and 64 above mean high water in the open position. In order to align the operating schedule with the observed marine traffic since 2007, this proposed rule would change the open on demand requirement for March 1 through April 30 and November 1 through November 30 to require a 4 hour advance notice.

#### D. Discussion of Proposed Rule

The majority of vessels that use this waterway are recreational boats that travel during the summer and fall months of May through October. The current operating schedule requires openings on signal from 7 a.m. to 11 p.m. between the

months of March and November. If vessels require an opening during any time of the year outside the summer and fall season or between the hours of 11 p.m. and 7 a.m., the bridge will open with a 4 hour advanced notice. The impact to vessels of the proposed change to the regulation is that vessels which require openings during March, April, or November will need to provide 4 hours advanced notice. Based on the average logged openings between 2007-2013 during the months of March, April, and November, the bridge tender logs indicate that fewer than 5 vessels annually will be required to provide 4 hours notice under the proposed change.

#### E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget

has not reviewed it under those Orders. The impact to vessels of this regulation is that vessels which require openings during March, April, or November will need to provide 4 hours advanced notice. Based on the average logged openings during 2007-2013 during the months of March, April, and November, the bridge tender logs indicate that fewer than 30 vessels annually require openings in those months. This proposed regulatory change should not have an adverse effect on their transit because the bridge is able to open if the mariner provides at least 4 hours of advance notice.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed action will not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule amends the months of the year when the draw must open on signal when it is documented that vessel traffic is low. Additionally, vessels may still request an opening with 4 hours advanced notice during the months of March, April, and November.

If you think that your business, organization, or



governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

## 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This proposed rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this proposed rule. We seek any comments or information that may lead to the

discovery of a significant environmental impact from this proposed rule.

F. List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.741 paragraph(a) to read as follows:

§ 117.741 Raccoon Creek

(a) The draw of the Route 130 highway bridge, mile 1.8, at Bridgeport, shall open on signal:

(1) May 1 through October 31 from 7 a.m. to 11 p.m.

(2) At all other times, if at least four hours notice is given.

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Dated: September 19, 2013.

Steven H. Ratti,  
Rear Admiral, United States Coast Guard,  
Commander, Fifth Coast Guard District.

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Date: 10/28/2013]